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C O N F I D E N T I A L SECTION 01 OF 02 THE HAGUE 003210

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DEPARTMENT FOR S/WCI - PROSPER/RICHARD, EUR - STEPHENS, EUR/SCE - GAUDIOSI/GREGORIAN/MITCHELL, L/EUR - KJOHNSON, L/AF - GTAFT. INR/WCAD - SEIDENSTRICKER/MORIN; USUN FOR ROSTOW/WILLSON

E.O. 12958: DECL: FIVE YEARS AFTER ICTY CLOSURE
TAGS: BK HR KAWC PHUM ICTY PREL SR
SUBJECT: ICTY - PROSPER WARNS THAT TRIBUNAL MAY CONTINUE PAST 2008/2010 DEADLINE IF SAM NON-COOPERATION CONTINUES

Classified By: Legal Counselor Clifton M. Johnson, Reasons: 1.5(b)-(d).

¶1. (C) Summary. On December 6, Ambassador-at-Large for War Crimes Issues Pierre Prosper met with officials from the Office of the Prosecutor (OTP) at the International Criminal Tribunal for the former Yugoslavia (ICTY). During the meeting, and later with the press, Prosper emphasized that a lack of cooperation on fugitives from states in the region, particularly Serbia, could jeopardize the ICTY's ability to complete its work by the 2008/2010 target and necessitate its continuation. OTP officials welcomed this approach and outlined their current views of noncooperation by Serbia and Montenegro (SAM) and Croatia, their efforts to conclude all investigations by the end of this month (reported septel), and the debilitating effects of the ongoing budget freeze on their ability to meet the strategy's longer-term target dates. End summary.

Completion Strategy and Belgrade Noncooperation

¶2. (C) Ambassador Prosper, joined by Embassy legal officers, met for nearly an hour on December 6 with Deputy Prosecutor David Tolbert, Chief of Investigations Patrick Lopez-Terez, and political advisers Anton Nikiforov and Jean-Daniel Ruch. Prosper reiterated the U.S. position that Serbia and Montenegro (SAM), and to a lesser extent Croatia, have not cooperated adequately with the ICTY on transferring fugitives to the Tribunal, thereby jeopardizing the Tribunal's ability to meet the 2008/2010 targets for completing its work. Prosper observed that if SAM's lack of cooperation continued, the ICTY may have to advise the UN Security Council (UNSC) that the completion targets were at risk and suggest new target dates in its next report to the Council in the spring. Prosper explained: "2008 (for completing all ICTY trials) is a goal, not a deadline." Tolbert welcomed this message, noting that its expectation that all indictees must come to The Hague before the Tribunal could finish its work helped close an important gap in previous USG statements that had focused exclusively on the transfer of Karadzic, Mladic, and Gotovina. Separately, Political Adviser Ruch noted that the recent provisional release of Franki Simatovic and Jovica Stanisic was extremely worrisome to OTP, which is concerned that the two will engage in witness intimidation and, in any event, will not return to The Hague. (NB: He asked that the USG monitor the activities of the two to the extent possible, given his view that they had the ability to destabilize the situation in Belgrade.)

Croatian Cooperation

¶3. (C) OTP's views on Croatian cooperation have soured since the Chief Prosecutor prematurely gave Zagreb high marks earlier this year, when she affirmed to EU interlocutors that Zagreb was 'fully cooperating' with the ICTY. OTP Chief of Investigations Lopez-Terez described Croatian cooperation now as "good, but not outstanding." With respect to documentary access, one area where Zagreb has been strong for some time, Lopez-Terez said that OTP investigators had recently discovered a cache of important documents that had been hidden from them while having been made available to defense attorneys. He suggested that some of the material could have been relevant to the prosecution of General Tihomir Blaskic, whose sentence was drastically reduced earlier this year. Lopez-Terez, despite satisfaction with access to certain police and intelligence sources, continues to see a strong support network for fugitive Ante Gotovina within the state at different levels. "Who is Croatia?" is the question on his mind, as he is unsure who in the government bears principal responsibility for failing to apprehend Gotovina. The recent surrender of Miroslav Bralo -- who was transferred to Bosnia and SFOR by Croatian authorities just a day after they informed the OTP that they could not locate him -- suggested to Lopez-Terez that the Croats "shot themselves in the foot." Lopez-Terez surmized that the GOC's desire to

claim public credit for the surrender had overridden their need to remain consistent with their previous denials. Lopez-Terez said that this incident suggested that Zagreb could apprehend wanted indictee Ante Gotovina if it chose to make that happen.

Budget Freeze

14. (C) OTP officials continued to lament the lack of ICTY resources resulting from the ongoing hiring freeze. The freeze was resulting in a record high vacancy rate at the Tribunal and preventing the OTP from staffing a team to help transfer cases to the region for domestic trials. Hopes were high, however, that a meeting this week of the UN Secretary General with Tribunal heads would break a stalemate over the budget freeze. As reported in septel, legal officers subsequently learned that SyG Annan had committed to lift the freeze as soon as Japan paid its outstanding contribution. (NB. Japan owes roughly 10 million dollars to the ICTY and roughly 8 million dollars to the ICTR, and has promised to pay both by year's end).

Press

15. (U) Prosper spoke to members of the press in the ICTY lobby, stressing the message that Prime Minister Kostunica bears responsibility for the lack of Serb cooperation with the Tribunal, that SAM inaction on transfers risked an extension of the Tribunal's work, and that, until cooperation improves, the United States could not support transfer of trials to the region. He reiterated these points later in meetings with reporters from the leading Dutch newspaper NRC Handelsblad and Le Monde. Subsequent reports from the wire services, which were picked up in the International Herald Tribune and other papers, emphasized the point that the Tribunal might continue its work past 2008/2010 deadlines if Serb non-cooperation on fugitives continued.

16. (U) This cable has been cleared by Ambassador Prosper.
RUSSEL